

Federal Communications Commission

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Before the
Federal Communications Commission
Washington, D.C. 20554

JUN 3 2 25 PM '93

DISPATCHED BY

WAVK Docket No. 93-1361

In the Matter of

Amendment of Section 73.202(b), RM-8161
Table of Allotments,
FM Broadcast Stations.
(Key Colony Beach, Key Largo,
and Marathon, Florida)

NOTICE OF PROPOSED RULE MAKING AND ORDER TO SHOW CAUSE

Adopted: May 6, 1993;

Released: June 3, 1993

Comment Date: July 26, 1993

Reply Comment Date: August 10, 1993

By the Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by Spanish Broadcasting System of Florida, Inc. ("petitioner"), licensee of Station WZMQ(FM), Channel 280C2, Key Largo, Florida, requesting the substitution of Channel 292C2 for Channel 280C2 at Key Largo, and the modification of its license to specify operation on Channel 292C2. In order to permit the substitution of Channel 292C2 for Channel 280C2 at Key Largo, petitioner also requests the substitution of Channel 280C2 for Channel 288C2 at Key Colony Beach, Florida, and the modification of Station WKKB(FM)'s construction permit to specify Channel 280C2; and the substitution of Channel 288A for Channel 292A at Marathon, Florida, and the modification of Station WAVK(FM)'s license to specify Channel 288A. Petitioner states that it will apply for Channel 292C2, if allotted.

2. In support of its proposal, petitioner states that the proposed rearrangement of channels is requested to reduce the potential for receiver induced third order intermodulation interference that has been observed in some automobile receivers within the vicinity of the shared antenna transmitter site of Station WZMQ(FM), Channel 280C2, Key Largo, and Station WKLK(FM), Channel 271C2, Rock Harbor, Florida. Petitioner contends that Stations WZMQ(FM) and WKLK(FM) are co-located at a site approximately 19 kilometers (11.8 miles) northeast of Station WCTH(FM), and interference impacts reception of Station WCTH(FM), Channel 262C1, Plantation Key, Florida. Petitioner states the rearrangement of channels and the new separations will cure the interference by separating the

presently co-located Channels 271C2 and 280C2. As proposed the two channels would be separated by 79 kilometers (49.1 miles).

3. We believe the public interest would be served by seeking comment on the proposed substitution of Channel 292C2 for Channel 280C2 at Key Largo, Florida, Channel 280C2 for Channel 288C2 at Key Colony Beach, Florida, and Channel 288A for Channel 292A at Marathon, Florida, since the new separations would cure the alleged interference problem. We note that petitioner offers no evidence of interference, and is requested to do so in comments. Channel 292C2 can be allotted to Key Largo in compliance with the minimum distance separation requirements of the Commission's Rules with a site restriction of 20.3 kilometers (12.6 miles) southwest of the community.¹ Channel 280C2 can be substituted for Channel 288C2 at Key Colony Beach at the construction permit site for Station WKKB(FM).² Channel 288A can be substituted for Channel 292A at Marathon at the licensed site of Station WAVK(FM).³

4. Whenever an existing licensee or permittee is ordered to change frequencies in order to accommodate a new channel allotment, Commission policy requires the benefiting party to reimburse the affected station for costs incurred. Petitioner states its willingness to reimburse the licensee of Station WAVK(FM) and the permittee of Station WKKB(FM) for the reasonable cost associated with the change in channels at Key Colony Beach and Marathon, Florida. We are herein issuing an *Order to Show Cause* to Richard L. Silva, permittee of Station WKKB(FM), Channel 280C2, Key Colony Beach, Florida, and Key Chain, Inc., licensee of Station WAVK(FM), Channel 292A, Marathon, Florida, to show why their respective authorizations should not be modified as proposed.

5. The Commission believes it would be in the public interest to seek comments on the proposal to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the following community:

City	Channel No.	
	Present	Proposed
Key Colony Beach, Florida	288C2	280C2
Key Largo, Florida	280C2	292C2
Marathon, Florida	292A	288A

6. IT IS ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, Richard L. Silva, permittee of Station WKKB(FM), Channel 280C2, Key Colony Beach, Florida, SHALL SHOW CAUSE why its license should not be modified to specify operation on Channel 288C2 in lieu of Channel 280C2.

7. IT IS ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, Key Chain, Inc., licensee of Station WAVK(FM), Channel 292A, Key Colony Beach, Florida, SHALL SHOW CAUSE why its license should not be modified to specify operation on Channel 288A in lieu of Channel 292A.

¹ The coordinates for Channel 292C2 at Key Largo are North Latitude 24-57-20 and West Longitude 80-34-50.

² The coordinates for Channel 280C2 at Key Colony Beach are

North Latitude 24-42-25 and West Longitude 81-06-17.

³ The coordinates for Channel 288A at Marathon are North Latitude 24-43-44 and West Longitude 81-02-05.

8. Pursuant to Section 1.87 of the Commission's Rules, Richard L. Silva and Key Chain, Inc., may, not later than **July 26, 1993**, file a written statement showing with particularity why its license should not be modified as proposed in the *Order to Show Cause*. The Commission may call on Richard L. Silva, to furnish additional information. If Richard L. Silva and Key Chain, Inc., raises a substantial and material question of fact, a hearing may be required to resolve such a question pursuant to Section 1.87. Upon review of the statements and/or additional information furnished, the Commission may grant the modification, deny the modification, or set the matter of modification for hearing. If no written statement is filed by the date referred to above, Richard L. Silva and Key Chain, Inc., will be deemed to have consented to the modification as proposed in the *Order to Show Cause* and a final *Order* will be issued by the Commission, if the above-mentioned channel modification is ultimately found to be in the public interest.

9. IT IS FURTHER ORDERED, That the Secretary of the Commission SHALL SEND by Certified Mail, Return Receipt Requested, a copy of this *Order* to the following:

Richard L. Silva
35 Sombrero Blvd
Marathon, FL 33050
(Permittee for Station
WKKB(FM))

Key Chain, Inc.
5500 W. W. 98th Paris
Miami, FL 33156
(Licensee for Station
WAVK(FM))

10. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

11. Interested parties may file comments on or before **July 26, 1993**, and reply comments on or before **August 10, 1993**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

James M. Weitzman
Allan G. Moskowitz
Kaye, Scholer, Fierman,
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901 15th Street, N.W., Suite 1100
Washington, D.C. 20005
(Attorneys for Petitioner)

12. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

13. For further information concerning this proceeding, contact Nancy J. Walls, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from

the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial com-

ments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.